IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE EIGHTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 4536 of 1999

Between:

K. Natarajan, S/o. The late Sri S. Krishnaswamy. Sr. Dy. General Manager, B.H.E.L. R. & D DIVISION, VIKAS NAGAR, HYDERABAD.

..PETITIONER

AND

1. The Bharath Heavy Electricals Limited. rep. by its

Chairman and Managing Director.
BHEL House, Siri Fort, New Delhi- 110049

2 The General Manager (in charge), Bharath Heavy

Electrical Limited, Corporate R & D
Division, Vikas Nagar, Hyderabad 500093.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, direction or order more particularly one in the nature of writ of Mandamus declaring that the petitioner is entitled to promotion on a time bound basis, and further direct the Respondents to promote the petitioner in the following manner with all attendant benefits and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For the Petitioner: MR.M.V.DURGA PRASAD, Advocate

For the Respondent No.1&2 : MR.P.KAMLAKAR, Standing Counsel

The Court Made the Following :

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ORAL ORDER

The petitioner is a Senior Deputy General Manager in Research and Development Division of Bharath Heavy Electricals Limited (BHEL), Hyderabad. The Research and Development Division was set up initially in New Delhi in the year 1972 and later shifted to Hyderabad in 1974.

The petitioner was appointed in the R&D department at E2 (Senior Engineer) level in 1974. He was promoted to the next level E3 in the post of Deputy Manager in 1978, as Manager (E4) in June, 1981 and Senior Manager (level E5) in June, 1985. He claims to have been qualified for promotion to the next level of Deputy General Manager (E6) in the year 1988. He was, however, so promoted in 1991. He was redesignated as a Senior Deputy General Manager in 1996. He claims promotion to the E7 level of Additional General Manager w.e.f 1982 after review of promotions in the earlier categories i.e., E6 + E7. He has filed the writ petition for a declaration that he is entitled to promotion on time bound basis and for consequential directions to the respondents to promote him on a time bound basis.

In paragraph 8 of the Writ petition, he summarizes his claims, wherein he pleads that he ought to have been promoted as Deputy General Manager,(E6) Senior Deputy General Manager, (an intermediate category between E6 and E7), Additional General Manager (E7) and General Manager (E8) with effect from 25-06-1988, 1991,1992 and 1994 respectively. In paragraphs 9 to 19 of the affidavit filed in support of the writ petition, he sets out his academic, research and performance credentials, which, according to him, should have ensured his promotion to various cadres and on the various dates as pleaded in paragraph-8 of the writ petition. He also sets out his record of achievements in the organization, in paragraphs 25 to 32.

On 27-06-1995 he made a representation to the Chairman and Managing Director in respect of his service grievance, i.e., super session of his claim for promotion. On 30-06-1997 he made another representation for promotion to the post of Additional General Manager. His representation dated 27-06-1995 has been rejected by the Chairman and the minutes of the rejection has been communicated by proceedings

of the Senior Manager (Personnel) dated 01-08-1995. As communicated to the petitioner, the order of rejection reads as under ::

> " It was a collective and conscious decision of the D.P.C. which was taken after taking all factors into account and those found more suitable were promoted. The individual may be suitably counselled by the concerned".

His representation dated 30-06-1997 has also been rejected and the rejection communicated by the Senior DGM (Personnel) by the letter dated 12-08-1997. This rejection reads as under::

> " With reference to your representation dated 30-06-97 regarding your non-promotion from SDGM to AGM in June 1997, I am directed to inform you that your case along with other SDGMs eligible for promotion to the grade of AGM was considered by the duly constituted Selection Committee in June,1997. The Selection Committee took into consideration all the relevant factors like Performance, ACRs, Qualifications, and Experience while recommending the persons for promotion to the higher grade i.e., AGM. However, the Committee did not recommend your promotion to the post of AGM in June,1997."

The basic premise on which the petitioner claims various promotions and from the various dates on which such promotions are said to be due to him, is that promotions from one grade to another are time bound promotions and on expiry of a tenure of service in a particular grade, promotions should automatically be given to the next grade. This assumption of the petitioner is to be examined with reference to the operational promotion policy of the respondent Corporation.

Rule 2 of the promotion rules sets out the classification of groups and cadres. Serial No.(b) enumerates the composition of the Executive Cadre, comprising salary grades E1 to E5, while Serial No. (a) enumerates the Senior Executive Cadre comprising salary grades E6 and above. Rule No.3 of the promotion rules states that Sr. Executive Cadre (E6 and above) is treated as All-Company Cadre and promotion to and within this cadre would be regulated on a Company-wide basis and carried out by the Corporate Office on the recommendations of the Special Committee of EDS/Head of Units and the promotion in salary grades up to and including E5 will be regulated by the Unit Management as per the principles and guidelines laid down from time to time. Rule-4 sets out the guidelines and principles for promotion from one Group/Cadre to another Group/Cadre and for promotions

within a Group/Cadre. Rule-4 reads as under::-

" 4. Guidelines and Principles

" 4.1. Promotion from one Group/Cadre to

another Group/Cadre

Promotion from one Group/Cadre to another Group/Cadre is on the basis of merit as assessed through a selection process which may include an appraisal of performance, and test/interview designed to determine the employees' skill, aptitude and abilities for effective functioning in the higher group/cadre. Employees are eligible for consideration for promotion to the higher group/cadre on completion of a specified number of years of service(to be referred to hereinafter as eligibility period) in the lower group/cadre, subject to organizational needs. This eligibility period will be notified by the Management from time to time keeping in view the requirements of the organization.

Employees promoted to or within the Supervisory Cadre or to/within the Executive Cadre upto E5 grade will be on probation for a period of one year. On satisfactory completion of the probation such employees will be confirmed in the new grade.

4.2**. Promotion within a Group/Cadre**

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Employees are eligible for consideration for promotion from a lower grade to the next higher grade within the same group/cadre on completion of the number of years of service prescribed in the lower grade(to be referred to hereinafter as the 'qualifying period") and attainment of satisfactory standards in conduct and performance. The 'qualifying period' for promotion within a group will be notified by the Management from time to time keeping in view the requirements of the organization.

On a true and fair construction of the provisions of Rule-4, it is apparent that career advancement from one salary grade to a higher salary grade with in a cadre or from one group to a higher group is not by *seniority simplicitor*. It is by a method of selection, on the basis of merit as assessed through a selection process and for promotion within a group or cadre on an attainment of satisfactory conduct and

performance as well. As the career advancement from one salary grade to another either within the Executive cadre or within the Senior Executive Cadre, is on the basis of selection, it is ***axiomatic*** that the non-promotion of a Senior to a higher salary grade or higher group does not *per se* amount to supersession. Such advancement is on the basis of a comparative assessment of merit and attainment of satisfactory standards in conduct and performance as assessed by the departmental promotion committee concerned, among officers eligible and within the zone of consideration for such promotion.

Paragraph-9 of the promotion policy enables representations by employees against their non-selection or supersession. Paragraph-9 reads as under::

> An attempt is always made by the Divisional/Departmental Head to explain to an employee the reasons for his non-selection so that the employee has an opportunity to make up his deficiencies in the relevant area. If the employee still has a grievance he may submit a representation to the competent authority through proper channel.
>
> The Head of Department will examine the case and submit to the General Manager/Executive Director with his remarks/recommendations for orders.
>
> Representations must be submitted within one month of the date of release of promotion order/list and unbecoming language will not only be rejected but will be taken up suitable with the employee concerned. Also joint appeals or representations will not be entertained.

It is not disputed by the respondents that the petitioner did make representations in time; such representations were addressed to the Chairman-cum-Managing Director. The representations were disposed of in the cryptic manner already noticed above. The assessment of merit in an employment situation, even to a selection post is a critical public function having effect also on public interest. In an organization such as the BHEL and in particular the R&D division of it where a confluence of academic, administrative and technical skills are involved in the performance of functions at Senior levels that contribute to the organizational successes, research and development and the National endeavour, critical assessment errors in the selection process are not normally susceptible to judicial scrutiny. Rule 9 provides, to aggrieved employees who have suffered non-selection, a salutary in-house remedy.

When a grievance is presented by an aggrieved employee in a representation under Rule 9, it is necessary that the grievance must be addressed in a rational manner recording intelligible reasons why the grievance of the petitioner does not merit rectification.

In the communication dated 01-08-1995 addressed by the Senior Manager (Personnel) to the petitioner in response to his representation dated 27-06-1995 the CMD has noted that others found more suitable in the collective and conscious decision by the DPC were promoted. This noting by the CMD is a *non-sequitor. The petitioner* was already aware that he has been passed over in the selection process.

The petitioner's grievance was not that promotions were made even without a DPC having been consulted. In the context of a representational remedy provided in Rule-9, it is mandatory for the competent authority to have considered the representation and to have himself reviewed the record of selection or to have referred the issue to a Committee to review the petitioner's case. In any event, reasons ought to have been recorded why the petitioner was not found suitable vis-à-vis others who were selected, in the context of the representations made by the petitioner.

The response to the petitioner's representation dated 30-07-1997 for promotion to the post of AGM is even more slipshod. An officer of equal rank i.e., another Senior DGM informs the petitioner that his case along with other SDGMS eligible for promotion to the Grade of AGM, was considered by a duly constituted committee in June-1997 and the committee took into consideration all the relevant factors like, performance ACRs, qualifications and experience, while recommending persons for promotion to the next higher grade i.e., AGM, but, did not recommend the petitioner for promotion. In the context of Rule 9 of the promotion policy, the competent authority should have recorded the reasons as to why and for what reasons, the petitioner was found unsuitable vis-à-vis others, for promotion.

Paragraph-9 of the promotion rules is clear that an attempt should be made by the divisional or departmental head to explain to the employee the reasons for his non-selection so that the employee may have an opportunity to make up his deficiencies in the relevant area. Rule 9 on a true and fair construction of its presents, is not a mere grievance redressal mechanism. It has also built into it a counseling

mechanism to an employee, to improve his performance. Ignorance of the conceptual basis of this grievance redressal mechanism or a casual approach to grievance redressal does not merely leave a senior level employee in the R&D sector of a public sector organization disenchanted till his retirement, but, also smothers any incentive to better performance. The benign purposes of the administrative policy underlying Rule 9 is thus subverted by a morbid or ritualistic approach to the grievance redressal mechanism. This Court records its serious concern at the wholly insensitive approach by the competent authority to the representations of the petitioner, in the context of Rule -9 of the promotion policy.

As there is no discernable time bound promotion policy extant and as the petitioner has failed to implead as a respondent in this writ petition, any person who is alleged to have been promoted to various higher grades but with an inferior record of service compared to himself, this Court does not consider it appropriate to call for the records of selection to ascertain whether the assessments made by the respondents were procedurally fair rational and transparent, whether any reasons were recorded for the comparative assessment of merit of the candidates at each of the selections and whether if a ranking was recorded, such ranking was vitiated by a perverse assessment of the relevant material considered in the selection process. No relief as sought in the writ petition could be granted in the circumstances of the case.

In the context of the cryptic and non-speaking rejection of petitioner's representations, first respondent is however directed to communicate to the petitioner, intelligible reasons for his non-promotion to the E7 and higher grades in the Senior Executive Cadre, reasons that satisfy the purposes of Rule 9 of the promotion policy, expeditiously and in any case within a period of sixty (60) days from the date of receipt of a copy of this judgment. On receipt of the response from the competent authority, to his representations, the petitioner may pursue his remedies, if his grievances subsist.

The writ petition is disposed of as above. No costs.

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GODA RAGHURAM,J

8TH JULY 2004

*TSNR/PVSN

TO

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